

GIBSON, DUNN & CRUTCHER LLP
Orin Snyder (*pro hac vice*)
osnyder@gibsondunn.com
200 Park Avenue
New York, NY 10166-0193
Telephone: 212.351.4000
Facsimile: 212.351.4035

Kristin A. Linsley (SBN 154148)
klinsley@gibsondunn.com
Martie Kutscher (SBN 302650)
mkutscherclark@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, CA 94105-0921
Telephone: 415.393.8200
Facsimile: 415.393.8306

Attorneys for Defendant Facebook, Inc.,

GIBSON, DUNN & CRUTCHER LLP
Deborah Stein (SBN 224570)
dstein@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Joshua S. Lipshutz (SBN 242557)
jlipshutz@gibsondunn.com
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: 202.955.8500
Facsimile: 202.467.0539

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**DECLARATION OF MARTIE
KUTSCHER IN SUPPORT OF
FACEBOOK, INC.'S ADMINISTRATIVE
MOTION TO FILE UNDER SEAL**

I, Martie Kutscher, hereby declare as follows:

1. I am an associate at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Facebook in the above-captioned matter. I am a member in good standing of the State Bars of California, New Jersey, and New York. I submit this declaration in support of Facebook's Administrative Motion to File Under Seal. I make this declaration on my own knowledge, and I would testify to the matters stated herein under oath if called upon to do so.

2. On August 31, 2020, I emailed Plaintiffs' counsel a detailed written proposal regarding the methodology for Facebook to log a sample set of materials from its App Developer Investigation ("ADI") over which Facebook asserts a claim of privilege. Over the course of the next few weeks, the parties negotiated extensively over this proposal and a process for logging the ADI materials was agreed upon. The final version of this proposal, which reflects the parties' agreed upon process, was agreed to on September 11, 2020. Excerpts of the final proposal are attached as Exhibit A to the Parties' September 11 Stipulation (Dkt. 513) ("Exhibit A"). Exhibit A is attached as **Exhibit 1**.

3. Exhibit A was created exclusively to aid in the parties' negotiations about ADI, and it was designated "CONFIDENTIAL." Exhibit A identifies current and former Facebook employees who participated in ADI, the names of applications that were suspended as a result of ADI, and brief explanations as to why they were suspended.

4. Exhibit A contains sensitive information about non-parties to this matter, specifically Facebook apps that were suspended as a result of ADI.

5. Because Exhibit A identifies apps that were suspended as a result of ADI, these non-party apps could suffer reputational harm if Exhibit A were made public, as members of the public might infer that they had engaged in some wrongdoing, when many apps were in fact suspended only for non-cooperation with ADI.

6. Exhibit A contains personnel information about current and former Facebook employees, including their positions.

7. Because Exhibit A matches current and former employees to their titles and reveals that they participated in ADI, it would enable the public and competitors to deduce information about confidential aspects of Facebook's business, such as which employees and departments are working on particular confidential matters, including business relationships with third parties. Public access to this information could cause Facebook competitive harm and could lead competitors to attempt to recruit critical Facebook employees.

8. On September 11, 2020, Plaintiffs' counsel informed me that Plaintiffs consent to the filing of Exhibit A under seal.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 11, 2020 in Palo Alto, California.

/s/ Martie Kutscher

Martie Kutscher